

United States v. Edwards, No. 03-50373

DEC 07 2005

FISHER, Circuit Judge, dissenting in part:

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

I respectfully disagree with the majority's conclusion that the district court properly excluded evidence of Officer Coats' dishonesty. Coats, while off duty, was pulled over by a police officer who asked him if he had been drinking. Coats initially denied it but later tested positive for alcohol and pled guilty to misdemeanor driving under the influence. The majority concludes that Coats' prior false statement to another police officer bears little on his credibility. Given the importance of Coats' credibility to this case and the context in which the false statement was made, I cannot agree.

Federal Rule of Evidence 608(b) provides that "specific instances of the conduct of a witness" may be inquired into on cross-examination if they concern the "witness' character for truthfulness or untruthfulness" and the court deems them probative. Here, Coats' testimony – and therefore his credibility – was central to the government's case. Key questions before the jury were whether Edwards actually had the gun that Coats picked up from the storage room of the store and why the gun did not have Edwards' fingerprints on it. Importantly, underpinning the case was the possibility that the gun linked to the defendant actually was planted – a theory acknowledged and addressed by the prosecutor in

his closing argument.

Coats' statements were dispositive on these issues. Coats was alone in the room when he recovered the gun that Edwards left there and provided the key evidence as to where the gun was located. Coats also provided the only evidence as to what the gun came in contact with and whether there should have been fingerprints on the gun when it reached the police station. Given that Coats was pivotal in establishing the link between Edwards and the gun found in the store, the jury should have been provided "sufficient information upon which to assess the credibility" of his testimony. *United States v. James*, 139 F.3d 709, 713 (9th Cir. 1998).

Our case law recognizes that prior false statements can bear on the credibility of a witness. In *United States v. Reid*, we held proper in a mail fraud case the questioning of defendant about false statements he made in a letter to a government agency while investigating the book at issue in the case. 634 F.2d 469, 470 (9th Cir. 1980). The defendant admitted falsifying his name, his occupation, the name of his business and his purpose in seeking information about government identification. *Id.* We ruled that the false statements were properly admitted under Rule 608(b) because they "were probative of appellant's lack of truthfulness." *Id.* at 473-74; *see also United States v. Jackson*, 882 F.2d 1444,

1447-48 (9th Cir. 1989) (holding “particularly probative” of truthfulness evidence that defendant had been disbarred 14 years earlier for misappropriating client funds). That Coats lied in the past, when pointedly asked a question by a fellow police officer as to his own lawful conduct, goes directly to his honesty and credibility.

Finally, while the majority cites the possibility of undue delay or confusion, these concerns are overstated and should not justify denying Edwards critical evidence bearing on his chief accuser’s credibility. Impeachment evidence typically raises the possibility that the opposing party will attempt to rehabilitate its witness, and I assume the government would have sought to do so, given the importance of Coats’ testimony. But the district court has plenty of tools to limit the scope of such rehabilitation to avoid a “mini-trial” of Coats and any jury confusion as to the relevance of Coats’ lie to the police.

Thus, I would hold that the district court abused its discretion in excluding evidence of Coats’ false statement – probative of his truthfulness – given the importance of his testimony and his credibility.